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OFFICE OF PETITIONS

In re Application of
Gilligan et al.
Application No. 09/990,138
Filed: November 21, 2001
Attorney Docket No. PH-7094-A(BMS-
0875)

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: DECISION GRANTING PETITION
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This decision is in response to Applicant's "REQUEST FOR RECONSIDERATION OF USPTO'S PATENT TERM ADJUSTMENT DETERMINATION" timely¹ filed on March 25, 2004. Applicants' request that the PTA determination be adjusted from zero (0) days to twenty-nine (29) days.

Applicants request for reconsideration is **GRANTED**. The correct determination at the time of the mailing of the notice of allowance is twenty-nine (29) days. The Office will adjust the PAIR calculation to reflect this decision.

Applicants assert that they are entitled to an adjustment of the PTA calculation because the Office failed to respond to applicants' amendment filed on May 19, 2003 until January 14, 2004, a one hundred and seventeen (117) day delay. Applicants assert that the nineteen (19) days that were granted were in error because the Office improperly entered the wrong date of response as being August 26, 2003 rather than the proper date of response of May 19, 2003. Applicants also assert that they failed to reply to the Office action within three months on three occasions for a total of eighty-eight (88) days. Accordingly, applicants assert that the correct amount of PTA is twenty-nine days (117-88=29).

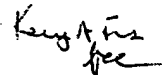
Applicants arguments are persuasive. A review of the file reveals that applicants were correct in the actual date of response of May 19, 2003 rather than the date reflected in the PALM records which was August 26, 2003. Accordingly, the Office failed to reply to applicants' response within four months as required by 37 CFR 1.704(a)(2). In addition, applicants were also correct in the amount of delay by applicants (88 days) pursuant to 37 CFR 1.704(b). Accordingly, the correct amount of PTA at the time of the mailing of the notice of allowance is twenty-nine (29) days.

The office acknowledges receipt of the \$200.00 fee. No additional fees are required by this request for reconsideration.

¹PALM indicates that the issue fee was filed on March 25, 2004.

The Office will forward this application to the Office of Publications for a prompt issuance of this application. The Office notes that any PTA delay in issuing the patent beyond four month issue fee payment date will be reflected in the determination that is reflected in the issue notification letter.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor for the Office of Deputy Commissioner for Patent Examination Policy, at 703-571-7757.


Karin Ferriter
Senior Legal Advisor
Office of Deputy Commissioner
for Patent Examination Policy